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09/982,721	10/18/2001	Michael Slocombe	0023-US-01	8719
83579	7590	06/09/2011	EXAMINER	
LEVEL 3 COMMUNICATIONS, LLC c/o CPA Global P.O. Box 52050 Minneapolis, MN 55402			DIVECHA, KAMAL B	
ART UNIT		PAPER NUMBER		
2451				
NOTIFICATION DATE		DELIVERY MODE		
06/09/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@cpaglobal.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/982,721	SLOCOMBE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	KAMAL DIVECHA	2451

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 March 2011.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7,9,14-17 and 30-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7, 9, 14-17, 30-51 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/22/2010</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

This Action is in response to communication filed 3/29/2011.

Claims 1-7, 9, 14-17, 30-51 are pending in this application.

Claims 8, 10-13 and 18-29 are cancelled in this application.

Claims 15, 32, 36, 40 are cancelled in response filed 3/29/2011.

Claims 47-51 are newly added claims.

**Response to Arguments**

**Applicant's arguments with respect to claims above have been considered but are moot in view of the new ground(s) of rejection, as necessitated by the substantial amendments.**

**Specification**

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: “Computer-readable medium”.

**Claim Rejections - 35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 1, 14, 30-35, 38-39, 41-46 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

**Claim 1 recites** “...advertising, by each of the DNS devices, the common address...”

The specification as filed fails to disclose or suggest DNS devices advertising the common address. The specification, at best, discloses advertising by the CDN nodes, e.g. pg. 11 and pg. 9, and CDN nodes comprises DNS server/device and cache server.

The specification does not disclose DNS server advertising the common address. Stated another way, the advertising can be performed by a cache server and/or other entity different than the DNS server in the CDN node.

**Independent claim 30 recites:**

“A system for content delivery in a network comprising:  
a plurality of domain name system (DNS) devices, each of the DNS devices associated with a cache server system;  
wherein the DNS devices are assigned a common address, **and wherein each DNS device advertises the common address within the network;**  
**wherein each DNS device monitors one or more load characteristics of the DNS device's associated cache server system in the network; and**  
wherein each DNS device discontinues advertising of the common address of the DNS device's associated cache server system if the associated cache server system has a load characteristics that exceeds the predefined overload metric”.

The specification fails to teach and/or disclose “DNS device advertising the common address” and “DNS device monitoring one or more load characteristics of the DNS device's associated cache server system in the network...”

The specification, at best, discloses the CDN node containing software to monitor the load...e.g. specification, pg. 11 lines 1-6 and fig. 3. The CDN node comprises the DNS and cache server, e.g. fig. 3, and the CDN node advertising the common address.

The specification does not disclose the monitoring software in the DNS server nor DNS server advertising the common address.

In the response filed, e.g. remarks, pg. 11, applicant asserts that since the monitoring software informs the routing software in the CDN DNS server to withdraw its BGP routing advertisements, one of ordinary skill in the art would infer that DNS servers are instructed to cause the withdrawal of the BGP messages, then DNS server must somehow be capable of causing BGP messages to be transmitted or advertised in the first place.

Examiner respectfully disagrees.

First it is noted that as per the specification, e.g. pg. 8-9, the routing software appears in the router 74b and there is no indication of the same routing software in the DNS server.

Secondly, the withdrawal can merely mean removing and/or deleting the BGP messages, i.e. received BGP messages from other nodes.

As such, the specification still fails to disclose DNS server performing the advertisements.

#### **Claims 42 and 44 recites:**

“The method as in claim 1, wherein advertising, by each of the DNS devices, the common address within the network includes *indicating that content is available for*

*retrieval by end user systems from each associated cache server system communicatively connected to the network.”*

The specification fails to disclose and/or suggest the limitation as in claim 42. At best, the specification discloses advertising the common address, e.g. pg. 7 lines 30-31, pg. 11. The specification does not disclose or suggest the process of indicating that content is available for retrieval by end user systems from each associated cache server system communicatively connected to the network.”

As such, the claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 31-35, 38-39, 41-46 are rejected for one or more reasons as set forth above.

#### **Claim Rejections - 35 USC § 101**

The 35 U.S.C. 101 rejection presented in the previous office actions is withdrawn in view of applicants claim amendments, which incorporates a non transitory computer readable medium.

The non-transitory computer readable medium excludes any means of transmitting the program via signal and/or carrier wave and/or transmission medium.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 1-7, 16-17 and 30, 33-34, 37-38 and 42-49 are rejected under **35 U.S.C. 103(a)** as being unpatentable over McCanne (US 6,785,704 B1) in view of Feldman (US 2002/0021675 A1).

As per claim 1, McCanne discloses a method of content delivery in a network, comprising:

associating each of a plurality of devices in a Domain Name system (DNS) with at least one cache server system (col. 13 L35-51, col. 17 L8-35);

assigning to the DNS devices a common address (col. 14 L31-54, col. 15 L32-61);

advertising, by each of the DNS devices, the common address within the network, wherein the common address is transmitted within the network *in association* with the BGP messages (col. 15 L2-14, col. 15 L32 to col. 16 L25);

monitoring one or more load characteristics of one or more of the cache server systems in the network (col. 13 L35-51, col. 17 L8-35); and

determining if one or more of the load characteristics exceeds a predefined overload metric (col. 18 L56 to col. 19 L3, L58-67).

However, McCanne does not explicitly disclose the process of discontinuing advertising of the common address by each DNS device associated with a cache server system determined to have a load characteristics that exceeds the predefined overload metric (note that the common address was first advertised in association with the BGP messages).

Feldman discloses the process of **discontinuing advertising of the common address** based on local policies ([0035-0036]: [0036] The AS also learns about destination prefixes via dynamic routing protocols, such as BGP. BGP is a distance vector protocol that constructs paths by successively propagating reachability information. Each BGP advertisement concerns a particular prefix and includes a list of ASes along the path, as well as other attributes. BGP advertisements are exchanged over BGP sessions between pairs of routers. The two ASes would typically establish a BGP session between the incident routers; these routers are BGP peers. The ISP employs local policies to select a route for each destination prefix, and to decide whether to advertise this route to neighboring ASes. **BGP policies can filter unwanted advertisements and assign local preferences, based on a variety of attributes. Then, the router executes the BGP decision process to select the best route to each destination prefix. BGP export policies determine whether, and what, to advertise to each BGP peer).**

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify McCanne in view of Feldman in order to discontinue

advertising the common address by each DNS device associated with a cache server system determined to have a load characteristics that exceeds the predefined overload metric.

One of ordinary skilled in the art would have been motivated because it would have allowed the DNS to decide whether and what to advertise to each BGP peers.

As per claim 2, McCanne-Feldman discloses the method of claim 1, wherein the common address is an anycast address (col. 14 L31-54, col. 15 L32-61).

As per claim 3, McCanne-Feldman discloses the method of claim 1, wherein the advertising act comprises: sending routing information to a plurality of routers in the network in accordance with the Border Gateway Protocol (BGP) ((col. 15 L2-14, col. 15 L32 to col. 16 L25)).

As per claim 4, McCanne-Feldman discloses the method of claim 1, wherein the cache server systems are geographically distributed across the network (col. 9 L40 to col. 10 L8).

As per claim 5, McCanne-Feldman discloses the method of claim 1, wherein the DNS devices are collocated with the cache server systems with which the DNS devices are associated (col. 14 L31 to col. 15 L61: DNS servers are associated with cache or web servers).

As per claim 6, McCanne-Feldman discloses the method of claim 1, wherein each cache server system and associated DNS devices are located in a different Internet Service provider Point of Presence (fig. 2, col. 9 L41-67, fig. 7, fig. 12).

As per claim 7, McCanne-Feldman discloses the method of claim 1, wherein each cache server system and associated DNS device is located at or near an entry point of the network (fig. 2, col. 9 L41-67, fig. 7, fig. 12).

As per claim 16, McCanne-Rochberger discloses the method of claim 3, further comprising storing, by each of the routers, multiple routes in association with the common address in a routing table (col. 15 L9-31, fig. 3-4).

As per claim 17, McCanne-Rochberger discloses the method of claim 16, further comprising: receiving a DNS resolution request at one of the routers, wherein the request specifies the common address and requests resolution of a DNS name (col. 11 L66 to col. 12 L39, col. 13 L30-67); selecting a route representing the shortest network distance to one of the DNS devices (col. 15 L9-31: the BGP advertisement includes the shortest path that the router can utilize. Moreover Routers generally employ the best and/or shortest path distance policy); and resolving the DNS name to a unique address of the cache server system associated with the one of the DNS devices (col. 16 L35 to col. 17 L31).

As per claim 42, McCanne-Rochberger discloses the method of claim 1, wherein advertising, by each of the DNS devices, the common address within the network includes indicating that content is available for retrieval by end user systems from each associated cache server system communicatively connected to the network (col. 15 L31-44, col. 15 L2-14, col. 15 L32 to col. 16 L25: when the common address is assigned to the web servers or cache servers, the advertising indicates the content is available for retrieval from these web servers).

As per claim 43, McCanne-Rochberger discloses the method of claim 42, wherein the cache server system comprises a single cache (fig. 6, col. 9 L40-67).

As per claim 47, McCanne-Rochberger discloses the method of claim 30, wherein the cache server system comprises a plurality of cache servers (fig. 6, col. 9 L40-67, col. 12 L21-39: server array).

As per claims 30, 33-34, 37-39, 44-45 and 47-49, they do not teach or further define over the limitations in claims 1-7, 16-17 and 42-43. Therefore, claims 30, 33-34, 37-39, 44-45 and 47-49 are rejected for the same reasons as set forth in claims 1-7, 16-17 and 42-43.

3. Claim 14, 31, 35, 39, 41, 50-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCanne (US 6,785,704 B1) in view of Feldman (US 2002/0021675 A1), and further in view of in view of Rochberger et al. (hereinafter Rochberger, US 6,614,757 B1).

As per claim 41, McCanne discloses a method of content delivery in a network, comprising:

associating each of a plurality of devices in a Domain Name system (DNS) with at least one cache server system (col. 13 L35-51, col. 17 L8-35);

assigning to the DNS devices a common address (col. 14 L31-54, col. 15 L32-61);

advertising, by each of the DNS devices, the common address within the network, wherein the common address is transmitted within the network *in association* with the BGP messages (col. 15 L2-14, col. 15 L32 to col. 16 L25);

monitoring one or more load characteristics of one or more of the cache server systems in the network (col. 13 L35-51, col. 17 L8-35); and

determining if one or more of the load characteristics exceeds a predefined overload metric (col. 18 L56 to col. 19 L3, L58-67).

However, McCanne does not explicitly disclose the process of discontinuing advertising of the common address by each DNS device associated with a cache server system determined to

have a load characteristics that exceeds the predefined overload metric (note that the common address was first advertised in association with the BGP messages).

Feldman discloses the process of **discontinuing advertising of the common address** based on local policies ([0035-0036]: [0036] The AS also learns about destination prefixes via dynamic routing protocols, such as BGP. BGP is a distance vector protocol that constructs paths by successively propagating reachability information. Each BGP advertisement concerns a particular prefix and includes a list of ASes along the path, as well as other attributes. BGP advertisements are exchanged over BGP sessions between pairs of routers. The two ASes would typically establish a BGP session between the incident routers; these routers are BGP peers. The ISP employs local policies to select a route for each destination prefix, and to decide whether to advertise this route to neighboring ASes. **BGP policies can filter unwanted advertisements and assign local preferences, based on a variety of attributes. Then, the router executes the BGP decision process to select the best route to each destination prefix. BGP export policies determine whether, and what, to advertise to each BGP peer).**

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify McCanne in view of Feldman in order to discontinue advertising the common address by each DNS device associated with a cache server system determined to have a load characteristics that exceeds the predefined overload metric.

One of ordinary skilled in the art would have been motivated because it would have allowed the DNS to decide whether and what to advertise to each BGP peers.

However, McCanne-Feldman does not disclose the process of restarting advertising of the common address after the load characteristics decreases.

Rochberg discloses the process of restarting advertising of teh common address after the load characteristics decreases (Rochberger: col. 10 L6-51, col. 12 L15 to col. 13 L50).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Rochberg-Feldman in view of Rochberg to restart advertising the common address after the load characteristics decreases.

One of ordinary skilled in the art would have been motivated because it would have provided load balancing between the nodes.

As per claim 50, McCanne-Feldman-Rochberger discloses the method of claim 41, wherein the cache server system comprises a single cache (fig. 6, col. 9 L40-67).

As per claim 51, McCanne-Feldman-Rochberger discloses the method of claim 41, wherein the cache server system comprises a plurality of cache servers (fig. 6, col. 9 L40-67, col. 12 L21-39: server array).

As per claim 14, 31, 35 and 39, McCanne-Feldman-Rochberg discloses the method of claim 1, further comprising after discontinuing advertisement by a DNS device for an associated cache server system having a load characteristics that exceeds the predefined overload metric, restarting advertising when the load characteristics decreases below the predefined overload metric (Rochberger: col. 10 L6-51, col. 12 L15 to col. 13 L50).

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCanne (US 6,785,704 B1) in view of Feldman (US 2002/0021675 A1) and further in view of Goldszmidt et al. (hereinafter Goldszmidt, US 6,195,680 B1).

As per claim 9, McCanne-Feldman discloses the method of claim 1, wherein at least one of the cache server systems comprises at least two cache servers connected in a cluster (fig. 6, col. 12 L21-39: server array).

However, McCanne-Feldman does not disclose the process wherein the at least two cache servers are coupled to a switch usable to select from among the at least two cache servers based on a selection policy.

Goldszmidt discloses a switch or router coupled to a server cluster and usable to select from among the cluster nodes based on a selection policy for servicing the clients requests (fig. 1a, fig. 4).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify McCanne-Feldman in view of Goldszmidt in order to provide a switch coupled to at least two cache servers and usable to select from among the at least two cache servers based on a selection policy.

One of ordinary skilled in the art would have been motivated because it would enable load balancing between the cluster nodes/servers.

#### **Additional References**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. McCanne, US 7,734,730 B2: Content Distribution system for operation over an Internetwork including content peering arrangements.

- b. Kompella, US 7,136,374 B1: Transport Networks Supporting Virtual Private Networks and Configuration of such networks: Discloses withdrawing announcement of reachability information.
- c. Bragg, US 7,286,479 B2: Routing for a communication network.
- d. Garcia-Luna-Aceves et al., US 7,343,422 B2: System and method for using uniform resource locators to map application layer content names to network later anycast addresses.

**Conclusion**

The teachings of the prior art should not be restricted and/or limited to the citations by columns and line numbers, as specified in the rejection. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

In the case of amendments, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and support, for ascertaining the metes and bounds of the claimed invention.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAMAL B. DIVECHA whose telephone number is (571)272-5863. The examiner can normally be reached on IFP (M-F: 10-6.30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN FOLLANSBEE can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/KAMAL B DIVECHA/  
Primary Examiner, Art Unit 2451